

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

AMERITOX, LTD.)
300 East Lombard Street, Suite 1610)
Baltimore, Maryland 21202)

Plaintiff,

v.

MILLENNIUM LABORATORIES, INC.)
16981 Via Tazon)
San Diego, California 92127)

Serve on:)
Resident Agent)
Capitol Corporate Services, Inc.)
11140 Rockville Pike)
Suite 570)
Rockville, Maryland 20852)

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Ameritox, Ltd. (“Ameritox”), by and through undersigned counsel, for its Complaint against Millennium Laboratories, Inc. (“Millennium”), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-85. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. Venue is proper in the District of Maryland under 28 U.S.C. §§ 1391 and 1400(b).

3. Millennium is transacting business within the State and this District, and Millennium is operating and/or supporting products and services that fall within one or more claims of Ameritox’s patents in this District. Millennium is therefore subject to personal

jurisdiction in this District. Furthermore, the damage to Ameritox and its intellectual property described herein has and continues to occur in this District.

THE PARTIES

4. Ameritox is a limited partnership organized under the laws of Texas with its principal place of business at 300 East Lombard Street, Suite 1610, Baltimore, MD. Ameritox is a clinical laboratory in the business of testing specimens and monitoring results for health care providers who prescribe medications used to treat patients for chronic pain and addiction.

5. On information and belief, Millennium is a corporation organized under the laws of California with its principal place of business at 16981 Via Tazon, San Diego, California. Millennium is a competitor of Ameritox in the business of testing specimens and monitoring the results for health care providers. Service of process on Millennium can be perfected through its registered agent, Capitol Corporate Services, Inc., 11140 Rockville Pike, Suite 570, Rockville, Maryland 20852.

FACTS COMMON TO ALL COUNTS

6. Ameritox and Millennium both test specimens and monitor results for health care providers who prescribe medications to treat patients for chronic pain and/or addiction. Because these drugs are susceptible to abuse by the patient or third parties, providers contract with companies such as Ameritox or Millennium to monitor drug levels in patients who are prescribed the aforementioned medications. Monitoring drug levels in patients necessitates the tracking of test results over a period of time and the sending of periodic reports to providers. Providers typically refer specimens to the same laboratory over a period of time to benefit from the monitoring services that the laboratories, such as Ameritox and Millennium, provide. Ameritox

and Millennium directly compete for market share in the urine drug testing and medication monitoring market in Maryland and elsewhere in the United States.

7. Ameritox is the exclusive licensee with all substantial rights of United States Patent No. 7,585,680 (the “‘680 Patent”) and United States Patent No. 7,785,895 (the “‘895 Patent”) pursuant to a license agreement between Ameritox and Marshfield Medical Research and Education Foundation (“Marshfield”) dated March 15, 2010.

8. On September 8, 2009, the ‘680 Patent, entitled “Method and Device for Monitoring Medication Usage,” was duly and legally issued to Marshfield, as assignee of named inventors Michael Larson and Thomas Richards. The ‘680 Patent generally claims a method for detecting and quantifying at least one metabolite in a biological sample, such as urine. A copy of the ‘680 Patent is attached hereto as Exhibit A.

9. On August 31, 2010, the ‘895 Patent, entitled “Method and Device for Monitoring Medication Usage,” was duly and legally issued to Marshfield, as assignee of named inventors Michael Larson and Thomas Richards. The ‘895 Patent generally claims a method for detecting and quantifying at least one metabolite in a biological sample, such as urine. A copy of the ‘895 Patent is attached hereto as Exhibit B.

10. Millennium is making, using, selling and/or offering for sale methods and/or services that infringe Ameritox’s rights under the ‘680 and ‘895 Patents. In or about June 2011, Ameritox first became aware of a new Millennium urine test sample report that Millennium had placed in the field. Millennium’s new report provides physicians with comparative results, comparing the subject patient to others patients that have also taken the same drug(s) as the subject patient. On information and belief, Millennium’s methods to arrive at its new reports infringe the ‘680 and ‘895 Patents. A copy of the sample report is attached hereto as Exhibit C.

FIRST CLAIM
(Patent Infringement of U.S. Patent No. 7,585,680)

11. Ameritox realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 10 of this Complaint.

12. By making, using, selling, and/or offering to sell its drug monitoring services, Millennium has infringed one or more claims of the '680 Patent directly, contributorily, and/or through inducement. Millennium has engaged in the foregoing conduct with respect to the patented invention in the United States without authority from Marshfield or Ameritox and during the term of the '680 Patent.

13. On information and belief, Millennium will not stop using, selling, and/or offering for sale the methods at issue to avoid infringing the '680 Patent.

14. On information and belief, Millennium has actual knowledge of the '680 Patent. Despite having actual knowledge, Millennium has and continues to sell methods and/or services that directly, contributorily, and/or through inducement infringe the '680 Patent. Millennium's infringement has been deliberate, willful and wanton.

15. Millennium's conduct has caused Ameritox to suffer and, unless enjoined by the Court, will cause Ameritox to continue to suffer damage to its operation, reputation, and goodwill.

16. Ameritox has no adequate remedy at law. Millennium's conduct has caused and, if not enjoined, will continue to cause irreparable damage to Ameritox. As a result of Millennium's wrongful conduct, Ameritox is entitled to injunctive relief.

SECOND CLAIM
(Patent Infringement of U.S. Patent No.7,785,895)

17. Ameritox realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 16 of this Complaint.

18. By making, using, importing, selling, and/or offering to sell their drug monitoring services, Millennium has infringed one or more claims of the '895 Patent directly, contributorily, and/or through inducement. Millennium has engaged in the foregoing conduct with respect to the patented invention in the United States without authority from Marshfield or Ameritox and during the term of the '895 Patent.

19. On information and belief, Millennium will not stop using, selling, and/or offering for sale the methods at issue to avoid infringing the '895 Patent.

20. On information and belief, Millennium has actual knowledge of the '895 Patent. Despite having actual knowledge, Millennium has and continues to sell methods and/or services that directly, contributorily, and/or through inducement infringe the '895 Patent. Millennium's infringement has been deliberate, willful and wanton.

21. Millennium's conduct has caused Ameritox to suffer and, unless enjoined by the Court, will cause Ameritox to continue to suffer damage to its operation, reputation, and goodwill.

22. Ameritox has no adequate remedy at law. Millennium's conduct has caused and, if not enjoined, will continue to cause irreparable damage to Ameritox. As a result of Millennium's wrongful conduct, Ameritox is entitled to injunctive relief.

JURY DEMAND

Ameritox hereby demands a jury trial on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Ameritox asks this Court to enter judgment against Millennium granting the following relief:

- A. Order, adjudge, and decree that Millennium has infringed the '680 Patent;
- B. Order, adjudge, and decree that Millennium willfully and knowingly infringed the '680 Patent;
- C. Order, adjudge, and decree that Millennium's infringement of the '680 Patent is exceptional under 35 U.S.C. § 285;
- D. Issue preliminary and permanent injunctive relief prohibiting Millennium and their respective parents, subsidiaries, principals, officers, agents, affiliates, servants, attorneys, employees, and all others in privity with them from infringing the '680 Patent;
- E. Order, adjudge, and decree that Millennium has infringed the '895 Patent;
- F. Order, adjudge, and decree that Millennium willfully and knowingly infringed the '895 Patent;
- G. Order, adjudge, and decree that Millennium's infringement of the '895 Patent is exceptional under 35 U.S.C. § 285;
- H. Issue preliminary and permanent injunctive relief prohibiting Millennium Ameritox their respective parents, subsidiaries, principals, officers, agents, affiliates, servants, attorneys, employees, and all others in privity with them from infringing the '895 Patent;
- I. An award to Ameritox of costs and attorneys' fees associated with the suit herein, to the extent not covered or allowed by the above; and

J. Such other and further relieve as the court and/or a jury deems just and proper.

Dated: June 23, 2011

Respectfully submitted,

By: /s/ James P. Ulwick

James P. Ulwick (Bar #00536)
KRAMON & GRAHAM, P.A.
One South Street, Suite 2600
Baltimore, MD 21202-3201
Phone: (410) 752-6030
Fax: (410) 539-1269
julwick@kg-law.com

Attorneys for Defendant/Counterclaimant Ameritox, Ltd.

Of Counsel:

Peter B. Bensinger, Jr. (*pro hac vice* pending)

Matthew W. Brewer (*pro hac vice* pending)

BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

54 West Hubbard Street, Suite 300

Chicago, Illinois 60654

Phone: (312) 494-4400

Fax: (312) 494-4440

peter.bensinger@bartlit-beck.com

matthew.brewer@bartlit-beck.com

Michael R. Osterhoff, Esq.

Adam L. Marchuk, Esq.

K&L GATES LLP

70 West Madison Street, Suite 3100

Chicago, Illinois 60602-4207

Phone: (312) 372-1121

Fax: (312) 827-8000

Michael.Osterhoff@klgates.com

Adam.Marchuk@klgates.com